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November 16, 2007

BY E-FILE AND HAND DELIVERY

The Honorable Sue L. Robinson
United States District Court, District of Delaware
J. Caleb Boggs Federal Building
844 King Street
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Wilmington, DE 19801

Re: *Jersey Dental Labs., et al. v. Dentsply Int'l, Inc., et al.*, C.A.
No. 01-267 (SLR), and *Howard Hess Dental Labs., Inc., et al.*
v. Dentsply, Int'l, Inc., C.A. No. 99-255 (SLR)

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**Attorneys admitted to
practice in Delaware*

Dear Chief Judge Robinson:

I write regarding the telephone conference scheduled with the Court for next Monday morning and to confirm to the Court Plaintiffs' intent to file a Reply Brief in support of Plaintiffs' pending Motion. Four days ago, in *Jersey Dental*, Defendants filed their brief in opposition to Plaintiffs' motion requesting certification of the Court's order dismissing Plaintiffs' exclusive dealing claims, pursuant to Rule 54(b) or 28 U.S.C. § 1292(b). Plaintiffs' Reply Brief is due November 26, 2007. Consistent with the Court's rules this letter is not to develop Plaintiffs' substantive arguments but merely list items that will be developed further via Plaintiff's reply brief.

Some of the points that will be made in Plaintiffs' Reply Brief are as follows:

- Defendants concede that the *Hess* case is, essentially, ready for appeal. D.I. 293 at 13 n.3 Thus, regardless whether or not

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Plaintiffs are permitted to appeal immediately from the dismissal in *Jersey Dental*, the Third Circuit will be reviewing the denial in *Hess* of Plaintiffs' request for an injunction **regarding the same exclusive dealing**, and permitting an appeal in *Jersey Dental* will promote judicial efficiency.

- Defendants' only argument against Rule 54(b) certification is that they intend to request permission to move to dismiss the pending price-fixing claim based on Plaintiffs' supposed failure to allege, **as a pleading matter**, "anticompetitive effects" of such price-fixing. D.I. 323 at 11. However, besides the Amended Complaint, *see* ¶¶ 125-26, and ¶¶ 128, 101-117, plaintiffs already have provided expert testimony that the prices of Dentsply's teeth, as well as the teeth of Dentsply's competitors, have been maintained at anti-competitive levels. *See Hess*, D.I. 281 at A-38 to A-43.
- In addition, defendants already have sought to obtain the dismissal of Plaintiffs' **Section 1 claim for exclusive dealing** using **the very same argument** about Plaintiffs' supposed failure to allege "anticompetitive effects."
- Finally, we will set forth the basis for certification pursuant to 28 U.S.C. §1292(b).

Respectfully,

/s/ Scott M. Tucker

Scott M. Tucker (#4925)

SMT/mem